Remarks

After amendment, claims 1, 3, 8, 10-13, 15-16, 20, 22-23, 25-26, 36, 43, and 59-67 are pending in the application. Claim 1 has been amended to incorporate the features of claim 6. As a result, claim 6 has been cancelled. Claim 64 has been amended to correct the spelling of non-pressurized. New claim 68 has been added to state that each of the individual portions is in its own cup or pouch.

Support for the amendment to claim 1 may be found, for example, at page 14, lines 10 through page 15, line 4. Support for the amendment to claim 64 may be found, for example, at page 4, line 29 through page 5, line 2. Support for new claim 68 may be found, for example, at page 25, lines 8-9.

Because of claims previously paid for and canceled, it is respectfully submitted that no fee(s) are due for adding claim 68. However, if any fee(s) are required for adding the new claim(s), please charge the appropriate fee(s) to the Kagan Binder Deposit Account No. 50-1775 and notify us of the same.

The pending claims have been rejected as follows:

- Claims 1, 3, 8, 10-13, 15-16, 20, 22-23, 25-26, 36, 43, 59-65 have been rejected under 35 USC 103(a) over Narayanaswamy et al (US Patent 6,261,613) in view of Ray et al (US Patent 6,004,595) and [G]ulstad et al (US Patent 3,767,421).
- Claim 66 has been rejected under 35 USC 103(a) over Narayanswamy et al (US Patent 6,261,613) in view of Ray et al (US Patent 6,004,595) and [G]ulstad et al (US Patent 3,767,421) further in view of Schaible et al (US Patent 6,365,210).

Applicant notes that the cover sheet of the Office Action indicates that claim 67 is rejected. However, the Examiner has provided no reasoning to support that rejection. Accordingly, Applicant submits that claim 67 is allowable. In the event that the Examiner does not agree, Applicant submits that the next office action must be a non-final action that contains specific reasoning why claim 67 is rejected. Applicant further submits that the next office action should be non-final because the failure to provide any specific reasoning for a rejection of claim 67 is due solely to the actions of the Examiner.

The Invention

The present claims are directed to a packaged dough product that has at least two individual (i.e., discrete) portions of a chemically leavened dough product in a low pressure (preferably non-pressurized) container. The claims employ a dough composition that has the ability to inhibit or control leavening or expansion during processing and refrigerated storage thereby eliminating the use of pressurized packaging. It also overcomes the objections consumers often express to the "popping" or pressure release of pressurized cans when they are opened.

The invention also affords convenience and eliminates the need to prepare the entire contents of the package once it has been opened. Because the present invention further comprises at least two individual or discrete portions of the dough product (preferably in individual pouches or cup-like forms), the consumer can prepare only the quantity of product desired and return the unused product the refrigerated storage for later use. This eliminates waste of the product.

Prior pressurized packages that contain multiple servings of a product typically have the servings in contact with one another. Once these packages were opened, their entire contents have to be baked at that time because the dough product would continue to expand if it were not baked. As a result, the consumer had to discard that portion of the product that was not baked and/or consumed at the time of preparation. The present invention over comes this disadvantage of the prior art.

Surprisingly, these benefits are achieved through the use of **an encapsulated** basic active ingredient and **a non-encapsulated** acidic active ingredient in the dough composition, wherein the acidic ingredient has a relatively low solubility, that is a solubility of greater than 35 kcal/mol below baking temperature yet is substantially soluble in the dough at baking temperature. This combination of features is not suggested by the combination of references relied upon by the Examiner.

It was unexpected that this combination of features would eliminate the need to employ pressurized packaging because even though the acidic active ingredient has a relatively low solubility at below baking temperatures in the dough, it is substantially soluble in the dough at baking temperatures. Conventional wisdom would lead one to an

opposite conclusion. That is it would lead one to conclude that an acidic active ingredient that has a relatively low solubility in the dough at below baking temperature would also be relatively insoluble in the dough at baking temperature.

The Examiner's Reasoning

1. Rejection of Claims 1, 3, 8, 10-13, 15-16, 20, 22-23, 25-26, 36, 43, 59-65

The Examiner has admitted that Narayanaswamy discloses some, but not all, of the elements of Applicant's claims. The Examiner specifically acknowledges Narayanaswamy does not disclose a package having at least two individual portions of the dough, the raw specific volume, the baked specific volume, an acid leavening agent selected to have a low solubility in the dough composition, and the type of barrier material claimed.

The Examiner has further argued that Gulstad discloses dough that uses encapsulated basic and acidic ingredients, the use of leavening agents, which are only nominally active at room temperature or by protecting the agents. The Examiner further argues that acidic ingredients that are only nominally active at room temperature are sodium aluminum sulfate, dicalcium phosphate dihydrite, and sodium aluminum phosphate.

The Examiner concludes that it would be obvious to choose the acidic ingredients among the materials disclosed by Gulstad to "be nominally active below the baking temperature to ensure the delay of the chemical reaction." The Examiner then states that this would further the objective of Narayanaswamy it discloses the prevention of chemical reaction between the basic material and the leavening acid until baking.

Applicant traverses this reasoning and submits that the references do not support the rejection because they teach away from the present invention.

As already acknowledged by the Examiner, Narayanswamy does not teach that the use of a non-encapsulated acidic ingredient that has a relatively low solubility in the dough (i.e., a solubility of greater than 35 kcal/mol) has any benefit. To the contrary, Narayanaswamy discloses a list of different acidic leavening agents. This list includes acidic leavening agents that do not meet the requirement of having a relatively low solubility in the dough composition. Furthermore, there is no indication in Narayanaswamy either that any one leavening agent or any one property of the leavening

agent provides any benefit over any other leavening agent or property. Thus, Narayanaswamy teaches that all of the acidic leavening agents are equivalent and that nothing more needs to be done to improve the performance of its disclosed compositions.

Gulstad fails to cure this fundamental deficiency of Narayanaswamy. That is, Gulstad fails to teach that Narayanaswamy can or should be modified to require the use of a non-encapsulated acidic leavening agent that is substantially insoluble in the dough. Gulstad teaches at Column 3, lines 37-48, that:

> "Chemical leavening agents can be used to leaven the dough prior to packaging much in the same manner as active yeast is used. Chemical leavening agents are generally composed of an acidifier and a carbonate salt normally sodium bicarbonate. Other carbonate salts are such as sodium carbonate, potassium bicarbonate, potassium carbonate and ammonium carbonate are sometimes used. The type of acidifier used generally determines the rate at which carbon dioxide is released from the carbonate salt. *For purposes of leavening the dough compositions prior to packaging, the characteristics of the leavening system are not critical.*" (Emphasis added.)

Thus, Gulstad, like Narayanaswamy, teaches that there is nothing critical about the selection of the specific acidic ingredient to be used.

Because each of Narayanaswamy and Gulstad teach that all acidic leavening agents work satisfactorily, neither reference teaches that there is any reason to improve any dough composition. Therefore, they provide no reason to make the selection required to achieve the invention as claimed. As a result, these references cannot be properly combined and the rejection of claims 1, 3, 6, 8, 10-13, 15-16, 20, 22-23, 25-26, 36, 43, 59-65 under 35 USC 103(a) is improper.

The combination of Ray with Narayanaswamy and Gulstad does not overcome this fundamental deficiency. Ray is silent with regard to any of the features necessary to achieve the invention as claimed. As a result it cannot provide any reason to use an acidic leavening agent that has a relatively low solubility in the dough at baking temperature. Therefore, the addition of Ray to the combination of Narayanaswamy and Gulstad does not provide the invention as claimed. As a result, the rejection of claims 1,

3, 6, 8, 10-13, 15-16, 20, 22-23, 25-26, 36, 43, 59-65 under 35 USC 103(a) is also improper.

2. Rejection of Claim 66

This rejection is premised on the argument that the combination of Narayanaswamy, Gulstad, and Ray provides everything in claim 66 except the use of an outer non-pressurized package. Applicant submits that this rejection is improper.

Schaible discloses the packaging of pizza crusts. It discloses nothing regarding the use of the acidic leavening agents required in the invention as presently claimed. As a result, even when combined with the other references, it does not result in the present invention. The addition of Schaible does not support the rejection of claim 66 under 35 USC 103(a).

Conclusion

In view of the above and remarks, it is respectfully submitted that the above-identified application is now in condition for allowance. The Examiner is invited to contact the undersigned, at the Examiner's convenience, should the Examiner have any questions regarding this communication or the present patent application.

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Respectfully Submitted,

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